EXHIBIT NO. 29.01

SAVE OUR SCENIC AREAS
J. RICHARD ARAMBURU
Ltr to EFSEC 5-6-2009
Exhibit No. 29.01

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May 6, 2009

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Skamania County
Community Development Department
Post Office Box 790
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Re: Certificate of Land Use Consistency Review for Whistling Ridge Wind Energy Project

Dear EFSEC:

This office represents the Save Our Scenic Area (SOSA), a Washington non-profit corporation concerned with the preservation of scenic, recreational and residential values and assets in the Columbia Gorge.

SOSA has closely followed the proposal of SDS Timber Company's Saddleback wind turbine proposal since its public announcement in late 2007. SDS changed the name of the proposal to the "Whistling Ridge Energy Project" (herein "WREP") when it applied to EFSEC. Most recently, SOSA was an appellant before the Skamania County Hearing Examiner in a successful challenge to the issuance of a determination of nonsignificance issued by Skamania County for its zoning code revisions. The Hearing Examiner has ruled that an environmental impact statement (EIS) will be required for the adoption of the new zoning code by the County.

SOSA writes today in response to the notice issued by EFSEC of a hearing on the question of whether the SDS proposal is consistent with local land use plans and zoning codes. The proposal is for multiple

wind turbines (50) on property located in eastern Skamania County. As will be demonstrated herein, the WREP proposal is not consistent with local zoning and there is no basis upon which EFSEC should attempt to preempt this local zoning.

1. STRUCTURE OF SKAMANIA COUNTY PLANNING AND ZONING.

Skamania County planning and zoning is governed by RCW 36.70, the County Planning Enabling Act. It is not one of the counties governed by the Growth Management Act RCW ch. 36.70A (GMA) and has not exercised the option to become a GMA county.

Skamania County first adopted a comprehensive plan in 1977, which was revised in 1991 with the creation of the Columbia River Gorge National Scenic Area (the "Scenic Area"). The 1977 Comprehensive Plan ("the 1977 Plan") is attached hereto as Attachment A. As will be described below, Skamania County recently (June, 2007) adopted a completely revised Comprehensive Plan, referenced herein as the "2007 Plan."

The County originally adopted a zoning code and map in 1985, which has been amended at various times over the years, the most recent of which was by Ordinance 2005-02 in 2005. The existing zoning code would presumably be consistent with the then adopted comprehensive plan from 1977.[1]

After review by the planning commission, Skamania County adopted a new comprehensive plan in June, 2007. In the fall of 2007, Skamania County proposed a new zoning ordinance to implement the new comprehensive plan.

The adoption of the new zoning code requires procedural and substantive compliance with the terms of the State Environmental Policy Act, RCW 43.21C (SEPA). Skamania County has also adopted a local SEPA ordinance that governs the County's procedures under

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[1] The Council is requested to take judicial notice of both the 2007 Plan and the current Skamania County zoning code.

SEPA. Skamania County is required by SEPA and its SEPA ordinance to make a "threshold determination" as to whether to prepare an EIS for its new zoning ordinance. This new zoning ordinance, for the first time in the history of planning and zoning in Skamania County, had specific provisions for large scale wind turbine facilities. [2]

Skamania County's responsible SEPA official, Planning Director Karen Witherspoon, issued a "mitigated determination of nonsignificance" or MDNS for the new zoning code proposal, which included large scale wind turbine regulations. Consistent with the terms of the Skamania County SEPA ordinance, the responsible official's MDNS was appealed to the Skamania County Hearing Examiner by both SOSA and the Friends of the Gorge. The Hearing Examiner held an open record hearing on January 21 and 22 at which the County vigorously defended its MDNS decision.

According to testimony from county officials at the hearing before the County's Hearing Examiner, representative of SDS had met several times with the Skamania County staff to discuss their proposed Saddleback project, but never submitted an application. BPA officials also were in attendance at such meetings according to Ms. Witherspoon's testimony.

On February 19, 2009, the Hearing Examiner entered her decision reversing the MDNS issued by the Responsible Official. See Attachment B hereto. As may be seen from the Findings and Decision, the testimony at the hearing focused on the adverse environmental impacts from wind turbines, centering on SDS's Saddleback proposal. That decision was not appealed by the County to Superior Court and is final. Under this ruling, before any decision is made by Skamania County on a zoning code map, an environmental impact statement must be prepared. Because the environmental impact statement must "accompany the proposal through the agency review process" (SEPA), the Skamania County Planning Commission must also reconsider any decisions it makes on the zoning ordinance based on the upcoming EIS.

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[2] A copy of this proposed zoning ordinance is attached to the WREP application as Appendix F.

As of the date of this submission, no steps have been taken by Skamania County to prepare an environmental impact statement on its proposed zoning code and map.

2. THE WIND TURBINE PROPOSAL IS NOT CONSISTENT WITH THE EXISTING COMPREHENSIVE PLAN.

As noted above, Skamania County adopted a new comprehensive plan for the County in June, 2007. That ordinance replaced a now 30 year old comprehensive plan. See the 2007 Plan at 7.

The 2007 Plan adopted three land use designations, Rural I, Rural II and Conservancy. Rural I was intend to "foster the optimum utilization of land within growing areas of the county. . . ." See page 23. Rural I is the only one of the three designations that allows commercial activity and light or heavy industry. The Rural II designation "is intended to provide for rural living without significant encroachment for land used for agricultural and timber." Page 24. The Conservancy designation is "intended to provide for the conservation and management of existing natural resources" and "logging, timber management, agricultural and mineral extraction are the main use activities that take place in this area." 2007 Plan page 25. Importantly, there has been no effort to amend the comprehensive plan since its adoption in June 2007 by the applicant here or any other party. In this regard, it is important to note that the state Growth Management Act requires that all counties designate "natural resource land" pursuant to RCW 36.70A.170 which includes forest, agricultural and mineral lands of "long term commercial significance." The County recognizes its responsibilities under GMA in the comprehensive plan at page 9 of the 2007 Plan. However, the County has not made a formal designation of such lands. The 2007 Plan essentially provides that designation in the Conservancy designation, which meets the RCW 36.70A.170 criteria: "Conservancy areas are intended to conserve and manage existing natural resources in order to maintain a sustained yield and/or utilization." 2007 Plan at page 25. The WREP is located in the Conservancy and Rural II land use designations.

Significantly, there is no mention of allowance for wind turbines or wind energy in the Rural II or Conservancy designations. "Industry" is permitted in the Rural I category, but not in the other two designations. The Conservancy designation includes only the following relating to utilities:

> Public facilities and utilities, such as parks, public water access, libraries, schools, utility substations and telecommunication facilities.

2007 Plan, p. 25-26. The 2007 comprehensive plan does not allow "private" or "semi-public facilities and utilities." Once again, the failure to include these uses as "appropriate uses" within the 2007 Plan is significant. These uses were defined in the existing zoning ordinance in the "Definition-Interpretation" section at SCC 21.08.010:

> "Semi-public facilities" means facilities intended for public use which may be owned and operated by a private entity.

That this definition was not incorporated into the 2007 Plan is indicative of the intent of the legislative body not to allow such uses and that they were not included within the 2007 Plan indicates a deliberate exclusion. Further, note that the 2007 Plan does not mention electrical energy facilities at all, indicating such facilities are not allowed.

It cannot be that the failure to mention wind energy facilities or wind turbines was a matter of oversight. As the Skamania County Hearing Examiner found in her MDNS decision, there was interest expressed by the applicant here in developing a wind farm well before the Comprehensive Plan was adopted:

> However, SDS Lumber has approached Skamania County on multiple occasions over the past several years to discuss a possible large-scale wind energy project (Saddleback Project) on its property within the County. Ms. Witherspoon (the Skamania County Planning Director) met with representatives of SDS and entities such as the Bonneville Power Administration on two or three occasions

> for "pre-application meetings" to discuss the permitting requirements for the project. Multiple pre-application meetings have been held because of changes in the development team. The project, if developed, would consist of at least 40 wind turbines. Although the last formal pre-application meeting was approximately two years ago, individuals associated with the project have been involved in the County's code update process and the president of SDS was present at the subject appeal hearing.

Findings, Conclusions and Decision of the Hearing Examiner for Skamania County ("FCD"), Finding 37, page 13. In fact, as the Hearing Examiner found:

> The Bonneville Power Administration (BPA) has produced a map entitled "Current and Proposed Wind Energy Interconnections to BPA Transmission Facilities" (Exhibit D.4). This map depicts the SDS Saddleback project as a proposed wind generation facility of 70 megawatts (MW).

FCD, Finding 38, p. 14. Skamania County and its commissioners have long been aware of the Energy Overlay Zone adopted by the neighboring county to the east (Klickitat); indeed, testimony at the Hearing Examiner hearing on the MDNS revealed that Skamania County was asked by Klickitat County to participate in the EIS process for its overlay zone, but Skamania County declined.

As described herein, the 2007 Comprehensive Plan does not authorize or permit electrical energy or wind turbines within the County. Policy LU6.1 deals with uses authorized under the comprehensive plan:

> Three types of uses should be established for each land use designation under this plan and for any zone established to implement this plan. If any use is not listed as one of the following types of developments, then the use is prohibited within that land use designation.

The Plan goes on to describe uses that may be listed as allowable uses, review uses and conditional uses. Policy LU6.2 specifies that:

> In the development regulations, land uses which are neither allowed without review by the Planning Department, permitted subject to conditions, nor named as a conditional use under a land use designation made in this plan or in an ordinance implementing this plan should be prohibited without proof of a substantial change in circumstances.

As such, uses not described as appropriate under each land use designation are to be prohibited. As applied to the WREP proposal, wind turbines are not mentioned as an allowable, review or conditional use in either the Conservancy or Rural II designations and are thus not allowed.

Under the County Planning Enabling Act, RCW ch. 36.70, a county is required to prepare and adopt a comprehensive plan. RCW 36.70.320 provides that:

> Each planning agency shall prepare a comprehensive plan for the orderly physical development of the county, or any portion thereof, and may include any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county. The plan shall be referred to as the comprehensive plan, and, after hearings by the commission and approval by motion of the board, shall be certified as the comprehensive plan. Amendments or additions to the comprehensive plan shall be similarly processed and certified

The statute goes on to proscribe that the comprehensive plan will be the basic source of reference when the County reviews any proposed project under RCW 36.70.450:

> After a board has approved by motion and certified all or parts of a comprehensive plan for a county or for any part of a county, the planning agency shall use such plan as the

> basic source of reference and as a guide in reporting upon or recommending any proposed project, public or private, as to its purpose, location, form, alignment and timing. The report of the planning agency on any project shall indicate wherein the proposed project does or does not conform to the purpose of the comprehensive plan and may include proposals which, if effected, would make the project conform. If the planning agency finds that a proposed project reveals the justification or necessity for amending the comprehensive plan or any part of it, it may institute proceedings to accomplish such amendment, and in its report to the board on the project shall note that appropriate amendments to the comprehensive plan, or part thereof, are being initiated.

Unlike the GMA, zoning codes and maps are not required in counties operating under the county enabling act as RCW 36.70.550 provides:

> From time to time, the planning agency may, or if so requested by the board shall, cause to be prepared official controls which, when adopted by ordinance by the board, will further the objectives and goals of the comprehensive plan. The planning agency may also draft such regulations, programs and legislation as may, in its judgment, be required to preserve the integrity of the comprehensive plan and assure its systematic execution, and the planning agency may recommend such plans, regulations, programs and legislation to the board for adoption.

As may be seen above, the 2007 Plan does not permit or allow wind turbine facilities by its terms. The County and this Council must apply the 2007 Plan as the "basic source of reference" in reviewing the SDS proposal and conclude that the present proposal is inconsistent with that plan.

3. PROPOSAL INCONSISTENT WITH SKAMANIA COUNTY ZONING ORDINANCE.

As described above, the proposal is inconsistent with the recently

adopted (June 2007) Skamania County Comprehensive Plan. Notwithstanding this defect, the applicant urges that the proposal is consistent with the existing zoning code. However, the existing zoning ordinance was adopted before the adoption of the 2007 Comprehensive Plan. Neither the Skamania County Planning Commission nor County Commissioners have adopted the existing zoning code as consistent with the 2007 Plan. Accordingly, the policies of the 2007 Comprehensive Plan cannot be applied to that code. Moreover, it is clear that the existing zoning ordinance does not permit the subject proposal.

Under Washington state law, development regulations or the zoning code must be consistent with the adopted Comprehensive Plan:

> 36.70.545. Development regulations--Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each county that does not plan under RCW 36.70A.040 shall not be inconsistent with the county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030.

Accordingly, if the existing development regulations are not consistent with the adopted 2007 Comprehensive Plan, then the zoning regulations are ineffective.

The applicant makes two attempts to demonstrate that its wind turbine proposal is consistent with the existing code, neither of which is persuasive.

This analysis begins with the important fact that the existing zoning code does not make wind turbines, wind energy or wind farms an allowable, review or conditional use in any zone. It is significant that "geothermal energy facilities" are listed as a conditional use in the FOR/AG10 and 20, Rural Estate zones. See SCC 21.56.030, 21.44.030. Indeed, "geothermal energy" is a specific type of an "Alternative energy resource" under the EFSEC statute at RCW 80.50.020(18). This indicates that the county was aware of types of alternate energy facilities, but only chose to allow only "geothermal

energy" as a conditional use, whereas "wind," another specifically listed "alternate energy resource" under RCW 80.50.020(18), is not permitted anywhere. Once again, this is not an oversight as "wind turbines" are specifically mentioned in the current code as exempt from height limitations in SCC 21.70.050. However, wind turbines, wind farms or a use related thereto is not listed as a permitted review use or conditional use in the zoning code. The only conclusion to be reached is that wind turbines are not authorized or permitted under the existing code.

The applicant also argues that Table 2-1 in the 2007 Plan at page 23 declares that certain uses are permissible in certain zones. The applicant states at page 4.2-6 of its application that:

> There are three land use designations outside of the specific subarea plans: Rural I, Rural II, and Conservancy. The project area is designated as "Conservancy." Table 2-1 of the Comprehensive Plan identifies zones that are consistent with the Conservancy designation, including: Residential 10 (R-10), Rural Estates 20 (RES-20), Forest Land 20 (FL 20), Commercial Resource Land 40 (CRL 40), Natural (NAT) and Unmapped (UNM). The project site is located in the FL 20, R-10, and UNM zones, all of which are consistent with the Conservancy designation.

However, Table 2-1 refers not to the current code, but to code that might be adopted after the 2007 Plan was adopted. This is clear from the explanation of the table at page 22:

> Table 2-1 shows the comprehensive plan designations and consistency of each potential zoning classification. The Plan Designation to Zoning Classification table is provided to identify those zoning districts that are consistent with each plan designation. Those districts, which are not consistent with the plan designation, are not permitted within the plan designation. This information is necessary to determine when, where and under what circumstances these designations should be applied in the future.

(Emphasis supplied). Thus the table references "potential" and "future" zoning classifications, not ones under the existing code. This is further demonstrated by the fact that the zoning classifications in Table 2-1 do not refer to the existing code, but to future code classifications. Thus, the "Commercial Resource Land 40" zone is a potential new zone as referenced in the draft zoning ordinance at Appendix F to the application. Under the existing code, the like zone is the Resource Production Zone or (FOR/AG20) zone, which is not mentioned in Table 2.1.

Thus Table 2-1 does not establish consistency with the existing code, but serves as a guide to a new zoning code, which has not yet been adopted and cannot be until an environmental impact statement is prepared under the Hearing Examiner's ruling.

The applicant argues that wind turbines are allowed as a use under the terms of the "Unmapped" area of the code. However, the terms of the 2007 Comprehensive Plan specifically provide that if a use is not listed as a conditional or allowable use within the land use designation under the plan then it will be prohibited. See discussion above and 2007 Plan at pages 30-31. The 2007 Comprehensive Plan also specifically provides under Policy LU2.6 that: "Building permits, septic tank permits, or other development permits issued by the County for any project will be in conformance with this Comprehensive Plan." (Emphasis supplied.) Since the "Unmapped" areas do not have a specific zone designation they must be regulated by the designation given by the 2007 Plan.

In addition, to determine the meaning of language within the 2007 comprehensive plan, it is useful to review the 1977 comprehensive plan it replaced. A copy of that plan is Attachment A hereto. That plan had identical land use designations, Rural 1, Rural 2 and Conservancy. See pages 91-92. Importantly, the 1977 comprehensive plan "Conservancy" designation provided:

> The following inappropriate uses may be allowed on a conditional or temporary basis:
>
> a. Industrial
> b. Commercial

See page 92. The "NOTE" at the bottom of page 92 states:

> Land uses which are considered by this plan to be inappropriate, may be established in Rural 2 and Conservancy land use areas, subject to public review and approval by the Board of County Commissioners. Such uses might include light industrial facilities, small commercial businesses, airstrips, portable sawmills, and other wood processing equipment.

(Emphasis in original). When the 2007 comprehensive plan was adopted, it retained verbatim the sentence setting the purpose and objective:

> "Conservancy areas are intended to conserve and manage existing natural resources in order to maintain a sustained resource yield and/or utilization."

Compare page 25 of the 2007 comprehensive plan with page 92 of the 1977 comprehensive plan. However, the 2007 comprehensive plan removed any allowance for "Industrial" or "Commercial" uses either as permitted, review or conditional uses in the Conservancy designation.

The inclusion in the 1977 Plan of the "inappropriate" industrial and commercial uses also explains why the "Unmapped" zone (guided by the 1977 Plan) allowed uses which were "not nuisances," to take account of their characterization as "inappropriate." However, with the adoption of the 2007 comprehensive plan, and the elimination of any possibility of any "inappropriate uses," allowance of uses that were not nuisances became inconsistent with the comprehensive plan and thus illegal.

In addition, the applicant contends that its private wind turbine proposal should be considered "semi-public facilities and utilities" and thus an allowable conditional use in the existing FOR/AG10 and 20 zones. However, the Comprehensive Plan says that "Public Facilities and Utilities" (emphasis supplied) are allowed in the Conservancy and Rural II Land Use Designations, not "Semi-public Facilities and Utilities." Since both of these uses are defined terms in the existing

code, it is very clear that when the Commissioners chose to include only one in the comprehensive plan, it was a deliberate decision. In addition, the 1977 plan made specific provisions in the Rural 2 zone for "Semi-public" uses. See page 91. "Semi-public" uses were specifically eliminated from the 2007 comprehensive plan in all land use designations, including "Conservancy." See 2007 Plan, p. 24-26. Further, the provision in the comprehensive plan gives examples of the kinds of "public facilities and utilities" which are appropriate in the zone "such as parks, public water access, libraries, schools, utility substations and telecommunication facilities." It cannot be said up to 50, 425 foot tall wind turbines as the WREP would intend, with an extensive road network, can be equated to such modest and common place uses as parks, public accesses and schools. If these were intended to include wind turbines, wind farms and other alternative energy facilities, the comprehensive plan would have said so by simply adding a definition of such uses. Of course if there was a proposal to include large wind farms within the 2007 Plan, it would have likely ignited significant controversy.

In essence, inclusion of a large scale wind farm as a "facility and utility" permissible in the Conservancy designation is a de facto amendment of the comprehensive plan. It does so without adherence to the requirement that the planning commission first review the comprehensive plan or any amendments under RCW 36.70.320 and .410, that there be a public hearing and a final decision by the Commissioners. RCW 36.70.380 and .420. In addition, the inclusion of wind turbine or other facilities in the comprehensive plan would have required new SEPA compliance. Given that the inclusion in the zoning code of provisions for wind farms has resulted in the requirement for a environmental impact statement, the same would likely be true for the comprehensive plan adoption.

In addition to the foregoing, the issue of consistency between the existing zoning code and the comprehensive plan arose in the hearing before the Skamania County on the appeal of SOSA and Friends challenging the County MDNS for the new zoning code. SOSA in particular alleged that the 2007 Comprehensive Plan was inconsistent with the proposed zoning ordinance. In response, the County argued that the allowance of wind turbines in the proposed

zoning ordinance did not have a significant impact because wind turbines were already allowed. This issue was resolved in favor of SOSA when the Hearing Examiner found:

> The 2007 Comprehensive Plan does not contemplate the type of energy facilities described in the Planning Commission Recommended Draft.

FCD, Finding 18, page 8. As an issue regarding the comprehensive plan, which was actually litigated between the County, SOSA and Friends, the County is now prevented from contesting this conclusion under the doctrine of claim preclusion or *res judicata*. Washington law is clear that *res judicata* applies to administrative proceedings:

> *Res judicata*, modernly called claim preclusion, P. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 Wash.L.Rev. 805 (1985), applies to quasi-judicial decisions by administrative tribunals as well as to judicial decisions by courts. *State v. Dupard*, 93 Wn. 2d 268, 274, 609 P.2d 961 (1980); *Miller v. St. Regis Paper Co.*, 60 Wn. 2d 484, 485, 374 P.2d 675 (1962); see *McCarthy v. Department of Social and Health Servs.*, 110 Wn. 2d 812, 823, 759 P.2d 351 (1988) (collateral estoppel); *Malland v. Department of Retirement Sys.*, 103 Wn. 2d 484, 490, 694 P.2d 16 (1985) (same). The Board's 1985 decision was quasi-judicial because it denied a proposed plat, and an administrative decision denying a proposed plat is quasi-judicial. *Miller v. Port Angeles*, 38 Wn. App. 904, 908, 691 P.2d 229 (1984), review denied, 103 Wn. 2d 1024 (1985); *Lechelt v. Seattle*, 32 Wn. 2d 831, 835, 650 P.2d 240 (1982), review denied, 99 Wn. 2d 1005 (1983); see RCW 58.17.100 (findings of fact required); RCW 58.17.180 (review is by writ of review). Therefore, the Board's 1985 decision was subject to *res judicata* at such time as it became final. *Columbia Rentals, Inc. v. State*, 89 Wn. 2d 819, 821, 576 P.2d 62 (1978) (final judgment is *res judicata*); *Pinkney v. Ayers*, 77 Wn. 2d 795, 796, 466 P.2d 853 (1970) (interlocutory order is not *res judicata*).

Lejeune v. Clallam County, 64 Wn. App. 257, 264-265, 823 P.2d 1144, (1992).

The finding by the Hearing Examiner that the 2007 comprehensive plan did not contemplate the wind energy facilities described in the zoning ordinance is binding on the County. Further, the existing zoning code, even if adopted by the County to implement the 2007 Plan (which it was not), does not permit large scale wind facilities.

5. THE RECOMMENDED DRAFT OF THE PLANNING DEPARTMENT CANNOT BE CONSIDERED BY EFSEC.

At Appendix F of its application, SDS argues that the EFSEC should consider a draft, unadopted zoning code and map. EFSEC will commit error if it considers the proposed code for two reasons.

First, zoning codes do not become effective until they are adopted by the legislative body with jurisdiction. Zoning codes and maps are considered "official controls" under RCW 36.70.02(11):

> (11) "Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

See also RCW 36.70.560. RCW 36.70.570 specifically requires that:

> Official controls shall be adopted by ordinance and shall further the purpose and objectives of a comprehensive plan and parts thereof.

(Emphasis supplied). Zoning ordinances and zoning maps may only be

adopted after a public hearing and recommendations by the Planning Commission under RCW 36.70.320 and .420. There is no provision in EFSEC legislation to consider unadopted codes, or ones under consideration.

Second, the Skamania County Hearing Examiner has ruled the MDNS issued by the responsible official in Skamania County was issued in error. The ruling of the Examiner is as follows:

> The Determination of Nonsignificance is reversed, and remanded to the County for preparation of an Environmental Impact Statement for the zoning code map and text amendments.

FCD, p. 29.

Under the terms of SEPA, the EIS when completed "shall accompany the proposal through the agency review processes; . . ." RCW 43.21.030(2)(d). In the present case, the Planning Enabling Act requires that before an agency adopts a zoning ordinance or maps, a public hearing must be held by the Planning Commission under RCW 36.70.580:

> Before recommending an official control or amendment to the board for adoption, the commission shall hold at least one public hearing.

Following the public hearing, the Planning Commission must make a recommendation to the County Commissioners under RCW 36.70.600.

> The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive and other matters intended by the commission to constitute the plan, or amendment, addition or extension thereto.

> The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chairman and the secretary of the commission and of such others as the commission in its rules may designate.

For SEPA purposes, the "existing agency review process" involves, at a minimum, public hearings before the Planning Commission, a recommendation by the Planning Commission and action by the County Commissioners. Each of these processes will require that a final EIS be prepared and available for those bodies. Thus any action previously taken, or recommendations made, must be reconsidered in light of Hearing Examiner's requirement that an EIS be prepared. Since the County has not yet prepared an EIS on its zoning ordinance, any existing drafts of a proposed ordinance may not be considered by EFSEC.

6. THE ROAD ACCESS TO THE SITE IS NOT PERMITTED BY SCENIC AREA RULES.

The application filed herein describes the improvement and widening of a road that appears to be the primary access to the site. Approximately 2.1 acres of this road are located in the National Scenic Area and are controlled by Skamania County Scenic Area regulations. The Friends of the Columbia River Gorge has addressed this issue in correspondence and SOSA adopts by reference the position stated by Friends on this issue in their submission.

7. SKAMANIA COUNTY CERTIFICATE OF LAND USE CONSISTENCY.

SOSA has just received Skamania County Resolution 2009-22 which purports to adopt a Certificate of Land Use Consistency for the WREP proposal. This Resolution was adopted on May 5, 2007 by the Skamania County Commissioners. Copies of the Resolution and its accompanying 28 page staff analysis were not available prior to adoption. Because of its late adoption, and lack of notice, SOSA is not able to provide a detailed response to the Resolution at this time. Neither county staff nor the commissioners provided notice of the

content of what was intended to be adopted and there were no public hearings on the matter. The Planning Commission for Skamania County was neither contacted or consulted regarding this matter. Accordingly, SOSA requests a two week delay in the close of the record on the land use consistency hearing to provide comments on the county's resolution.

SOSA does have one preliminary comment. As noted above, the County's 2007 comprehensive plan contains no provisions for wind energy facilities in any land use designation. Notwithstanding this obvious deficiency, the County Commissioners proposed a zoning ordinance and map that would allow wind energy facilities in Conservancy designations. The County's decision not to prepare an environmental impact statement on the zoning code and map was appealed to Skamania County's own Hearing Examiner. She not only reversed the MDNS issued by the County (see Attachment B), but also ruled that the "2007 Comprehensive Plan does not contemplate the type of energy facilities [among them large scale wind energy facilities] described in the Planning Commission Recommended Draft." The County did not appeal the Hearing Examiner decision to the Superior Court.

Now, in the letter accompanying the submission of Resolution 2009-22 to this Council, everyone is told that:

> Since this decision (of the Hearing Examiner requiring the environmental impact statement) the map and updates for the Zoning Ordinance project have been permanently placed on hold. It has not been decided whether or not the County will continue with this project or start from scratch when the zoning update process resumes.

May 4, 2009 letter from Karen Witherspoon to EFSEC, page 2.

It is clear that the County, having been denied the approval of wind turbines in legally appropriate processes, has now decided to go through the "back door" to try to legalize large scale wind farms by simply deciding that they are consistent with existing codes. However, as demonstrated above, the adopted comprehensive plan and zoning ordinances do not allow such facilities. It is likely that the County's

actions, as interpretations of land use codes, will be challenged as illegal under the Washington Land Use Petition Act. In the meantime, EFSEC should refuse to consider the county's position on this matter or dismiss it and hold that the proposed project is not consistent with the comprehensive plan and zoning ordinances.

Based on the foregoing, SOSA submits that the WREP is inconsistent with the 2007 Skamania County Comprehensive Plan and current zoning code and EFSEC should so conclude.

Thank you in advance for your consideration of our views.

Sincerely yours,

ARAMBURU & EUSTIS LLP

J. Richard Aramburu

JRA/py
cc: SOSA